

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

BRIAN DONOHO,

Plaintiff(s),

v.

SPACECRAFT COMPONENTS CORP., et al.,

Defendant(s).

Case No. 2:15-CV-640 JCM (NJK)

ORDER

Presently before the court is plaintiff/counter-defendant Brian Donoho's (hereinafter "plaintiff") motion to dismiss. (Doc. # 10). Defendant/counter-claimant Spacecraft Components Corp. (hereinafter "defendant") filed a response, (doc. # 18), and plaintiff filed a reply, (doc. # 19).

**I. Background**

The instant case arises out of an employment dispute. Defendant designs, distributes, and manufactures environment connectors primarily for railway, military, and industrial use. (Doc. # 5). Plaintiff was employed as an at-will sales manager for defendant from approximately April 2010, through August 2013. (Doc. # 5). Plaintiff was terminated on or around July 19, 2013. (Doc. # 2).

Plaintiff alleges that throughout his term of employment he was subjected to a variety of discriminatory remarks and comments. (Doc. # 2). Plaintiff further asserts that he was terminated because he filed formal complaints about this discriminatory conduct. (Doc. # 2). In addition, plaintiff contends that defendant's proffered reason for dismissing him for "business needs" is mere pretext. (Doc. # 2).

1           Upon being hired, plaintiff agreed to defendant's technology policy, which included,  
 2           among other provisions, that "company technology shall not be used to send (upload) or receive  
 3           (download) copyrighted materials, trade secrets, proprietary financial information, or similar  
 4           materials without prior authorization from Spacecraft Components management." (Doc. # 18).

5           On April 7, 2015, plaintiff filed a complaint alleging four causes of action: (1) national  
 6           origin discrimination in violation of Title VII, 42 U.S.C. § 2000e-2 and NRS 613.330; (2) religious  
 7           discrimination in violation of Title VII, 42 U.S.C. § 2000e-2 and NRS 613.330; (3) retaliation in  
 8           violation of 42 U.S.C. § 2000e-3(a) and NRS 613.340; and (4) intentional infliction of emotional  
 9           distress. (Doc. # 2). Defendant then filed a counterclaim against plaintiff for a violation of the  
 10          Nevada Trade Secrets Act. (Doc. # 10).

11          Defendant's counterclaim alleges that, after plaintiff was terminated, plaintiff sent emails  
 12          to his personal account containing confidential information including, but not limited to, pricing  
 13          details, business plans, and client contact information. (Doc. #10). In particular, defendant alleges  
 14          that plaintiff misappropriated this valuable corporate information by sending himself trade secrets  
 15          from defendant's servers for the purpose of circumventing defendant's technology policy, security,  
 16          and monitoring software. (Doc. #10).

17          Plaintiff now moves to dismiss defendant's counterclaim, arguing that the court lacks  
 18          supplemental jurisdiction to rule on the counterclaim and that the counterclaim fails to state a claim  
 19          upon which relief can be granted.

## 20           **II.    Legal standard**

### 21                   **a.   Supplemental jurisdiction**

22          All counterclaims are either compulsory or permissive. Compulsory counterclaims are  
 23          claims that "arise[] out of the transaction or occurrence that is the subject matter of the opposing  
 24          party's claim" and "do[] not require adding another party over whom the court cannot acquire  
 25          jurisdiction." Fed. R. Civ. P. 13(a). The Ninth Circuit has adopted the "logical relationship test"  
 26          for determining whether a counterclaim is compulsory. *In re Pegasus Gold Corp.*, 394 F.3d 1189,  
 27          1196 (9th Cir. 2005). The test provides:  
 28

1 A logical relationship exists when the counterclaim arises from the same aggregate  
 2 set of operative facts as the initial claim, in that the same operative facts serve as  
 3 the basis of both claims or the aggregate core of facts upon which the claim rests  
 4 activates additional legal rights otherwise dormant in the defendant.

5 *Id.* (quoting *In re Pinkstaff*, 974 F.2d 113, 115 (9th Cir. 1992)); *Sparrow v. Mazda Am. Credit*, 385  
 6 F. Supp. 2d 1063, 1066 (E.D. Cal. 2005) (“Under this test, the court analyzes whether the essential  
 7 facts of the various claims are so logically connected that considerations of judicial economy and  
 8 fairness dictate that all issues be resolved in one suit.”) (internal citations, quotations, and  
 9 alterations omitted).

10 All counterclaims that are not compulsory are permissive. Federal Rule of Civil Procedure  
 11 13(b) states that “[a] pleading may state as a counterclaim against an opposing party any claim that  
 12 is not compulsory.” Further, the advisory committee notes to the 2007 amendment of Rule 13  
 13 require “[b]oth as a matter of intended meaning and current practice, a party may state as a  
 14 permissive counterclaim a claim that does grow out of the same transaction or occurrence as an  
 15 opposing party’s claim even though one of the exceptions in Rule 13(a) means the claim is not a  
 16 compulsory counterclaim.”

17 28 U.S.C. § 1367(a) permits a federal district court to exercise supplemental jurisdiction  
 18 over state law claims when (1) the federal district court has original jurisdiction over the action  
 19 and (2) the other claims are so related to claims in the action within original jurisdiction that they  
 20 form part of the same case or controversy under Article III. Courts have abandoned “the analysis  
 21 for determining whether supplemental jurisdiction exists based on whether a counterclaim is  
 22 compulsory or permissive.” *Sparrow*, 385 F. Supp. 2d at 1067 (collecting cases).

23 “The issue whether supplemental jurisdiction exists over counterclaims is determined by  
 24 the language of § 1367.” *Id.* “Whether supplemental jurisdiction exists over a counterclaim  
 25 depends on whether the state counterclaim and the federal claim [are] ‘so related . . . that they form  
 26 part of the same case or controversy under Article III of the United States Constitution.’ ” *Id.*  
 27 (quoting 28 U.S.C. § 1367(a)).

28 . . .

. . .

1                   **b. Motion to dismiss**

2                   A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief  
3 can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "[a] short and  
4 plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2);  
5 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed  
6 factual allegations, it demands "more than labels and conclusions" or a "formulaic recitation of the  
7 elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

8                   "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550  
9 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual  
10 matter to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (citation  
11 omitted).

12                  In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply  
13 when considering motions to dismiss. First, the court must accept as true all well-pled factual  
14 allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.  
15 *Id.* at 678-79. Mere recitals of the elements of a cause of action, supported only by conclusory  
16 statements, do not suffice. *Id.*

17                  Second, the court must consider whether the factual allegations in the complaint allege a  
18 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's complaint  
19 alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the  
20 alleged misconduct. *Id.* at 678.

21                  Where the complaint does not permit the court to infer more than the mere possibility of  
22 misconduct, the complaint has "alleged—but it has not shown—that the pleader is entitled to relief."  
23 *Id.* at 679 (internal quotations omitted). When the allegations in a complaint have not crossed the  
24 line from conceivable to plausible, plaintiff's claim must be dismissed. *Twombly*, 550 U.S. at 570.

25                  The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202  
26 (9th Cir. 2011). The *Starr* court held,

27                                 First, to be entitled to the presumption of truth, allegations in a complaint or  
28 counterclaim may not simply recite the elements of a cause of action, but must  
contain sufficient allegations of underlying facts to give fair notice and to enable

the opposing party to defend itself effectively. Second, the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.

*Id.* at 1216.

### III. Discussion

#### a. Supplemental jurisdiction

This court has original, federal question jurisdiction over plaintiff's claims against defendant pursuant to 28 U.S.C. § 1331. However, this court lacks original subject matter jurisdiction over the state law counterclaim asserted by defendant. The issue is whether this court may exercise supplemental jurisdiction over the counterclaim pursuant to 28 U.S.C. § 1367.

"The traditional rule is that federal courts have supplemental jurisdiction over compulsory counterclaims, since a plaintiff would otherwise lose his opportunity to be heard on that claim." *Sparrow*, 385 F. Supp. 2d at 1066. Federal Rule of Civil Procedure 13(a) provides that a compulsory counterclaim "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim."

In determining what constitutes a compulsory counterclaim, the Ninth Circuit applies a "logical relationship" test to determine whether a claim and counterclaim arise out of the same transaction or occurrence. *Montana v. Goldin*, 394 F.3d 1189, 1196 (9th Cir. 2005); *see also in re Pinkstaff*, 974 F.2d 113, 115 (9th Cir. 1992).

The operative question is "whether the essential facts of the various claims are so logically connected that considerations of judicial economy and fairness dictate that all the issues be resolved in one lawsuit." *Pochiro v. Prudential Ins. Co. of Am.*, 827 F.2d 1246, 1249 (9th Cir. 1987). Thus, courts must determine whether there is a substantial overlap between the facts necessary to the claim and counterclaim. *Id.* at 1251.

Plaintiff alleges that defendant's counterclaim is not compulsory and thus this court lacks subject matter jurisdiction over it. According to plaintiff, his retaliation and national origin/religious discrimination claims are wholly unrelated and factually dissimilar to defendant's

1 trade secrets counterclaim. (Doc. # 10). Plaintiff further contends that allegations of improper use  
2 are inappropriate here as plaintiff now works in an unrelated field. (Doc. # 19).

3 Here, the counterclaim meets the logical relationship test and is compulsory. The  
4 allegations pertaining to plaintiff's initial employment discrimination claims and defendant's  
5 counterclaim stem from the same operative facts. Both parties' claims are logically connected to  
6 their employment relationship and judicial economy is best served by adjudicating these issues in  
7 a single proceeding. Thus, under the traditional rule, this court has supplemental jurisdiction  
8 because the counterclaim is compulsory. *See Sparrow*, 385 F. Supp. 2d at 1066.

9 However, many courts have abandoned "the analysis for determining whether  
10 supplemental jurisdiction exists based on whether a counterclaim is compulsory or permissive."  
11 *Sparrow*, 385 F. Supp. 2d at 1067 (collecting cases). Supplemental jurisdiction is now determined  
12 based on the language of § 1367. *Id.* The language of § 1367 states, "[w]hether supplemental  
13 jurisdiction exists over a counterclaim depends on whether the state counterclaim and the federal  
14 claim [are] 'so related . . . that they form part of the same case or controversy under Article III of  
15 the United States Constitution.' " 28 U.S.C. § 1367(a). The Ninth Circuit has not yet addressed  
16 this issue. *Sparrow*, 385 F. Supp. 2d at 1067.

17 Based on the foregoing reasons, the court finds that supplemental jurisdiction also exists  
18 under the language of § 1367. The counterclaim is sufficiently related to initial claims to be part  
19 of the same case or controversy plaintiff alleges, and judicial economy is best served by  
20 adjudicating all of these issues in a single action.

21 Both the underlying claim and counterclaim derive from an employment relationship  
22 between plaintiff and defendant. This relationship, coupled with the fact that this counterclaim  
23 aids in defendant's after-evidence affirmative defense, creates a sufficient factual connection  
24 between the claims and makes the application of supplemental jurisdiction appropriate over  
25 defendant's counterclaim.

26 Notably, a district court may decline to exercise supplemental jurisdiction over a claim if:  
27 (1) the claim raises a novel or complex issue of state law; (2) the claim substantially predominates  
28 over the claim or claims over which the district court has original jurisdiction; (3) the district court

1 has dismissed all claims over which it has original jurisdiction; or, (4) in exceptional  
 2 circumstances, there are other compelling reasons for declining jurisdiction. 28 U.S.C. § 1367(c).  
 3 The court finds that none of the § 1367(c) exceptions apply and that it would be inefficient to  
 4 dismiss defendant's Nevada Trade Secrets Act counterclaim.

5 Accordingly, this court exercises its discretion under 28 U.S.C. § 1367(a) to provide  
 6 supplemental jurisdiction over defendant's counterclaim. The court will now address plaintiff's  
 7 motion to dismiss for failure to state a claim.

8 **b. Motion to dismiss**

9  
 10 To survive a motion to dismiss for a Nevada Trade Secrets Act claim, defendant must  
 11 allege: (1) a valuable trade secret; (2) misappropriation of the trade secret through use, disclosure,  
 12 or nondisclosure of use of the trade secret; and (3) the requirement that the misappropriation be  
 13 wrongful because it was made in breach of an express or implied contract or by a party with a duty  
 14 not to disclose. *Frantz v. Johnson*, 116 Nev. 455, 999 P.2d 351, 358 (Nev. 2000).

15 Defendant's counterclaim alleges that plaintiff violated the Nevada Trade Secrets Act by  
 16 "acquiring trade secret information by improper means" and "misappropriat[ing] Spacecraft's  
 17 trade secret information and materials for his own improper use to the detriment of Spacecraft."  
 18 (Doc. # 5).

19 More specifically, defendant claims this violation occurred through plaintiff "send[ing]  
 20 himself, to his personal email address, numerous emails containing confidential, propriety and  
 21 trade secret information while he was employed with Spacecraft." (Doc. # 5). Such information  
 22 included "customer lists and contact information, distributor information, customer invoices, sales  
 23 and marketing plans/reports, and pricing data." (Doc. # 5). Defendant contends that plaintiff did  
 24 so for "no legitimate reason," but instead to circumvent defendant's technology policy as the  
 25 company maintains a web mail login for all salespeople. (Doc. # 5).

26 Defendant further alleges that plaintiff read and agreed to defendant's technology policy,  
 27 which provides, in relevant part, that company technology (including email) "shall not be used to  
 28 send (upload) or receive (download) copyrighted materials, trade secrets, proprietary financial  
 information, or similar materials without prior authorization from Spacecraft Components

1 management” and that the “use of the company technology for personal purposes is prohibited.”  
 2 (Doc. # 5).

3 Plaintiff argues that defendant’s counterclaim is solely a retaliatory reaction to plaintiff’s  
 4 initial claims. (Doc. # 10). To support this proposition, plaintiff points to the fact that that this  
 5 counterclaim was filed only after plaintiff was terminated and commenced suit against the  
 6 defendant. (Doc. # 10). Plaintiff maintains that the alleged factual allegations are insufficient to  
 7 show a breach of the Nevada Trade Secrets Act and to survive a Rule 12(b)(6) motion to dismiss.  
 8 (Doc. # 10).

9 Accepting defendant’s allegations as true, the court finds that defendant has sufficiently  
 10 alleged a violation of the Nevada Trade Secrets Act. Defendant’s counterclaim alleges  
 11 wrongdoing on the part of the plaintiff that goes beyond merely filing suit. Defendant sufficiently  
 12 alleges that plaintiff improperly emailed himself confidential information, without permission,  
 13 from the company servers. (Doc. # 5).

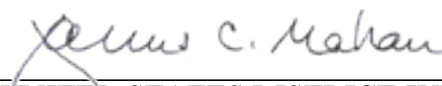
14 Moreover, the “determination of whether corporate information, such as customer and  
 15 pricing information, is a trade secret is a question for the finder of fact.” *Frantz v. Johnson*, 116  
 16 Nev. 455, 466, 999 P.2d 351, 358 (2000). The Ninth Circuit held in *Imax Corp. v. Cinema Tech.,*  
 17 *Inc.*, 152 F.3d 1161, 1164-65 (9th Cir. 1998), that trade secrets should be described with “sufficient  
 18 particularity,” and this court finds that defendant has sufficiently alleged a trade secret for Rule  
 19 12(b)(6) purposes. (Doc. # 5). Accordingly, dismissal for failure to state a claim is not warranted.

#### 20 **IV. Conclusion**

21 Accordingly,

22 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff/counter-  
 23 defendant’s motion to dismiss, (doc. # 10), be, and the same hereby is, DENIED.  
 24

25 DATED June 17, 2015.

26   
 27 \_\_\_\_\_  
 UNITED STATES DISTRICT JUDGE